IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.100 of 2006
Date of decision:10.10.2006

Commissioner of Central Excise Delhi III, Gurgaon.

....Appellant

versus

M/s. Maruti Udyog Limited, Gurgaon.

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India, for the revenue.

JUDGMENT:

1. This appeal has been preferred by the revenue proposing following substantial question of law:-

> "Whether interest is recoverable from a party on wrongly availed Modvat credit taken by them in the year 1998 on the strength of certificate issued by the range Superintendent under rule 57E on 29.3.1995 under sub rule 3 of Rule 57I?"

2. The assessee claimed Modvat Credit which was not allowable in absence of requisite certificate under Rule 57E of the Central Excise Rules, 1944 (for short, 'the Rules') being produced within six months but still the assessee claimed the same and credited the amount in RG-23A Part-II. The authorities disallowed the Modvat Credit relying upon judgment of the Hon'ble Supreme Court in **Osram Surya (P) Limited v. Commissioner of Central Excise, Indore,** (2002) 142 ELT 5.

2.1 The Tribunal, however, held that the assessee was not liable to pay interest as the credit was only taken as an entry in the Modvat record and was not infact utilised. The Tribunal held that in absence of utilisation of credit, the assessee was not liable to pay interest.

3. We have heard learned counsel for the appellant.

4. Learned counsel for the appellant is unable to show as to how the interest will be required to be paid when in absence of availment of Modvat Credit infact, the assessee was not liable to pay any duty. The Tribunal has clearly recorded a finding that the assessee did not avail of the Modvat credit in fact and had only made an entry.

5. In view of this factual position, we are unable to hold that any substantial question of law arises.

6. The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

Oct. 10, 2006 (Rajesh Bindal)
'gs' Judge